

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA RECEIVED
CHARLESTON DIVISION USDC CLERK, CHARLESTON, SC

MATTHEW R. DEHART and) 2:04-22289-DCN-18A**b** A 10:13
MICHAEL O. ECKARD,)
)
 Plaintiffs,)
)
 v.) REPORT AND RECOMMENDATION
)
 GLOBE TRAVELS, INC.,)
 VIPFARES.COM, and AIR CHINA)
 INTERNATIONAL CORP.)
)
 Defendants.)
)

This diversity action alleging Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, and Unfair and Deceptive Trade Practices under the South Carolina Unfair Trade Practices Act ("SCUTPA") is before the undersigned United States Magistrate Judge for a report and recommendation on plaintiffs' damages following the default of defendant Globe Travels, Inc. ("Globe"). 28 U.S.C. § 636(b).

On July 15, 2004, the pro se plaintiffs contacted defendant VIPfares.com ("VIP") through the Internet to book airline tickets to China. Subsequently, the plaintiffs were given assurances and plaintiff Michael O. Eckard's ("Eckard") credit card was charged for the applicable airfare.

Unfortunately thereafter, no tickets from any defendants were forthcoming and the plaintiffs bought substitute tickets at a higher fare from another air carrier.

This matter was originally filed in state court and was removed here on September 20, 2004, on grounds of diversity jurisdiction. Defendant Air China International Corp. ("Air China") answered plaintiffs' complaint and asserted crossclaims on September 23, 2004. Defendant Globe was served on October 12, 2004, but never answered the complaint.¹

On January 31, 2005, the plaintiffs moved to place Globe in default and filed an affidavit of default on the same day. The Clerk entered default and an evidentiary hearing was held before the undersigned United States Magistrate Judge on March 17, 2005.

After reviewing the exhibits presented in the testimony of plaintiff Eckard, it appears that the following damages have been proven and should be awarded against Globe:

-Replacement tickets from United Airlines

$$(\$1638.50 \times 2 \text{ tickets}) = \$3277.00$$

-Less the original Contract price

$$(\$3277.00 - \$1465.72) = \$1811.28$$

-Treble damages pursuant to SCUTPA²

$$(\$1811.28 \times 3) = \$5433.84$$

¹ On March 14, 2005, Globe sent an email to the Clerk of Court for the United States District Court in Charleston, SC, denying their liability in this matter. This does not affect their liability and they are still responsible for their failure to answer plaintiffs' complaint.

² Treble damages under SCUTPA are punitive damages, as the purpose of SCUTPA is to punish those in fault.

-Plus total costs for postage, service, & filing fees³

$$(\$5433.84 + \$241.61) = \mathbf{\$5675.45}$$

For the aforementioned reasons, the final damages award of \$5675.45 should be awarded to the plaintiffs, with \$2837.72 being awarded to plaintiff Matthew R. Dehart and \$2837.72 being awarded to plaintiff Eckard.

Respectfully Submitted,



Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina

July 1, 2005

³ According to plaintiffs' Exhibit # 5.